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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/970,258	11/14/97	SLIFER R	

QM12/0606

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EXAMINER	
CLAYTON, S	
ART UNIT	**PAPER NUMBER**
3713	9

DATE MAILED: 06/06/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/970,258	Applicant(s) RUSSELL DALE SLIFER
	Examiner S Clayton	Group Art Unit 3713

☒ Responsive to communication(s) filed on *Feb 17, 2000*.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-20* is/are pending in the application.

Of the above, claim(s) *19* is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-18 and 20* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 02-17-00 have been fully considered but they are not persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant argues the prior art of record Lemelson et al. '788 fails to disclose storage and use of the users age. However, Lemmelson et al. '788 discloses a student input device with a code identifier which stores personal information and performance statistics of the student. Examiner stands by all rejections.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson et al. '788.

5. Regarding claims 1-6, 9-13 and 16, Lemelson et al. '788 discloses essentially all the claimed invention as set forth in the instant application. In addition, Lemelson et al. '788 discloses an interactive instructional system includes a microprocessor-controlled base station for use by an instructor and/or a computer and a plurality of input devices each for use by a student. The base station and input devices communicate over a communication link or network employing wires, optical fibers, radio links, infrared links or the like. Each input device is in the form of a multiple keyswitch operated device which the student may operate to respond to a question posed by the instructor, computer or base station during a lecture. Each input device is also provided with an identifier code. Responses by the student are transmitted to the base station in messages, each of which further includes an identifier code thereby identifying the answering device or student. The base station receives the students' responses from the input devices and generates information for display to the instructor, including selected class and individual statistics, the base

station using the identifier code to associate each response to a student, see FIG 2-4. In addition, Lemelson et al. '788 discloses each student station 12(s), when transmitting response indicia to the base station 11, transmits both the response indicia as provided by the student, and a station identifier which identifies the student station 12(s), which, in turn, can be used to identify the student occupying the station 12(s). (It will be appreciated that the student stations 12(s) in system 10 will each have a unique station identifier to allow the base station 11 to identify, for each response indicia, the student station 12(s) which provided the response.) By transmitting both the station identifier as well as the student's response to the base station 11, the base station 11 can generate response statistics not only for the class as a whole, but also for individual students in the class, so that base station 11 can provide information as to the individual student's progress in the class to the instructor, see 4:2-46. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Lemelson et al. '788 in a video game instead a question and answer game in order to provide a device for controlling a game and identifying the user(s) or player(s).

6. Regarding claim 20, Lemelson et al. '788 discloses essentially all the claimed invention as set forth in claim 16 of the instant application. In addition, Lemelson et al. '788 discloses system 10, which is relatively compact being based on inexpensive microprocessors, and provides information as to the students' understanding of the material being presented by the instructor during instruction so that the instructor may tailor the presentation according to the students' understanding. Thus, it would have been obvious to one of ordinary skill in the art at the time of

the invention to allow a teacher to restrict the users/players of the game in order tailor the game to a user's understanding or age.

7. Regarding claims 7-8 and 14-15, Lemelson et al. '788 discloses essentially all the claimed invention as set forth in claims 1 and 9 of the instant application. However, Lemelson et al. '788 fails to disclose a removable rechargeable battery pack and power saver circuitry. However, it is well known in the art to use rechargeable batteries in order to provide for operation of an electronic device and to use a power saver circuit in order to provide for longer use of the device.

Citation of Pertinent Art

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Caldwell et al. '437 discloses an audience participation system, which utilizes wireless transmission, wherein individual using a module can store information in module memory 36. This information can also be transmitted along with the response provided by the member of the audience.

Tognazzini '023 discloses a polling and communications device permits a speaker to interact with an audience in data or voice modes. Questions can be transmitted to the speaker in data form. Alternatively, the speaker can selectively activate a wireless microphone for a particular member of the audience in response to an indication, sent over a data channel that a user has a question.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S Clayton whose telephone number is (703) 305-0124. The examiner can normally be reached Monday-Friday from 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary can be reached at (703) 308-2217.

S Clayton
SC
06-05-00

JESSICA J. HARRISON
PRIMARY EXAMINER